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this Memorandum Decision shall not be  
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case.

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**IN THE  
COURT OF APPEALS OF INDIANA**

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LEE GILLIAM,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0608-CR-683
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Sheila Carlisle, Judge  
Cause No. 49G03-0209-FC-242072

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**April 26, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Lee Gilliam challenges the revocation of his placement with Community Corrections and subsequent placement with the Department of Correction, and the imposition of a portion of his suspended sentence. We affirm.

### FACTS AND PROCEDURAL HISTORY

In 2003, Gilliam pled guilty to theft,<sup>1</sup> perjury,<sup>2</sup> and failure to file an income tax return.<sup>3</sup> The sentencing court stated:

On Count I, the defendant is sentenced to eight years at the Indiana Department of Corrections [sic]. Four years of that sentence will be executed through Community Corrections. You'll be initially placed in the correctional component of Community Corrections until further notice of the Court.

\* \* \* \* \*

The Court, again, re-weighs the aggravating factors versus the mitigating factors and orders these sentences to be run concurrently. Here again, the sentence on these counts in sum total is eight years, with four executed through Community Corrections. Condition—or excuse me. Initial placement will be in the correctional component here in Marion County until further notice of the Court.

The Court certainly does retain jurisdiction to modify this sentence as to what component the defendant will be placed in and where he should serve the—I suppose the four years executed. *His failure to successfully complete the executed portion of the sentence will be deemed a violation of the terms of the suspension of the remaining four years.*

So if you, somewhere along the way, whether—whatever component you're in in Community Corrections, at the time fail to comply with the Court's orders, you're going to do eight years in prison, sir. That's all there is to it.

(Appellee's App. at 111-13) (emphasis supplied).

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<sup>1</sup> Ind. Code § 35-43-4-2.

<sup>2</sup> Ind. Code § 35-44-2-1.

<sup>3</sup> Ind. Code § 6-3-6-11. That statute provides in part: "It is a Class D felony for a taxpayer to fail to make any return required to be made under this article, . . . with intent to defraud the state or to evade the payment of the tax, or any part thereof, imposed by this article."

Gilliam served six months of his sentence in the Marion County Jail. When he was released from the jail component of his sentence in May 2004, he was ordered to serve the remainder of his sentence with Lake County Community Corrections. Gilliam was to serve nine months in the work release component followed by eighteen months in the home detention component of the Lake County program.

A Notice of Violation of Community Correction Rules was filed on April 3, 2006. The notice alleged Gilliam had violated the conditions of his placement because he “obtained a new arrest of failing to file an Income Tax Return” under a specified cause number. (Appellant’s App. at 233.) Hearings were held in June 2006, and the trial court found probable cause Gilliam had violated his placement in community corrections. It ordered his remaining sentence be served in the Department of Correction. The trial court also revoked Gilliam’s previously suspended sentence and ordered he serve two years in the Department of Correction “in addition to whatever remaining time he has a result of his Community Corrections placement being revoked.” (Tr. at 117.)

### **DISCUSSION AND DECISION**

“The Due Process Clause of the Fourteenth Amendment imposes procedural and substantive limits on the revocation of the conditional liberty created by probation.” *Braxton v. State*, 651 N.E.2d 268, 269 (Ind. 1995), *reh’g denied*. “[T]he due process requirements . . . for probation revocations are also required when the trial court revokes a defendant’s placement in a community corrections program.” *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999), *reh’g denied*.

Gilliam argues he was denied due process when the trial court revoked his placement with a community corrections program and when it ordered him to serve two of the four years the sentencing court had suspended conditionally. He asserts: “The court arbitrarily and without notice found that the violation of Community Corrections rules could also be used to revoke his probation [sic] and impose an additional executed sentence.” (Br. of Appellant at 9.)

We begin by noting Gilliam was not on probation but had been placed in a community corrections program. “The Community Corrections Program was established by the General Assembly to encourage counties to develop and operate ‘a coordinated local corrections-criminal justice system’ as an effective alternative to imprisonment at the state level.” *Million v. State*, 646 N.E.2d 998, 999-1000 (Ind. Ct. App. 1995) (quoting Ind. Code § 11-12-2-1). A community corrections program may include components such as “residential and work release, electronic monitoring, day treatment, or day reporting.” Ind. Code § 35-38-2.6-2. At a minimum, a community corrections program allows an offender to serve his sentence in a local jail instead of in a state prison. The program also offers an offender the possibility of less-restrictive confinements, such as work release or electronic monitoring.

If a defendant violates the terms of his placement in community corrections, the court, after a hearing, may change the terms of the placement, continue the placement, or “revoke the placement and commit the person to the department of correction for the remainder of the person’s sentence.” Ind. Code § 35-38-2.6-5. The “commission of a crime while serving time in the community corrections program is always grounds for

revocation.” *Decker v. State*, 704 N.E.2d 1101, 1103 (Ind. Ct. App. 1999), *trans. dismissed* 714 N.E.2d 168 (Ind. 1999).

Our review of revocation hearings for community corrections is similar to that for probation revocation hearings. A defendant “is not entitled to serve his sentence in a community corrections program but, as with probation, placement in the program is a ‘matter of grace’ and a ‘conditional liberty that is a favor, not a right.’” *Million*, 646 N.E.2d at 1001-02 (internal citations omitted). “A defendant in community corrections is entitled to written notice of the claimed violation of the terms of his placement, disclosure of the evidence against him, an opportunity to be heard and present evidence and the right to confront and cross-examine adverse witnesses in a neutral hearing before the trial court.” *Id.* at 1003. A community corrections revocation hearing is civil in nature and the State must prove the alleged violation by a preponderance of the evidence. *Decker*, 704 N.E.2d at 1104.

The State provided written notice to Gilliam through the Notice of Violation of Community Corrections Rules. The notice alleged Gilliam had violated the conditions of his placement because he had been arrested for failure to file an income tax return.<sup>4</sup> At the hearing, the trial court permitted Gilliam to hear and present evidence, and to confront and cross-examine the State’s witnesses. Gilliam has not challenged the neutrality of the court or the sufficiency of its findings. Accordingly, Gilliam’s claim he was not afforded due process in this proceeding fails.

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<sup>4</sup> Before the hearing, Gilliam filed a response, in which he specifically referred to the State’s allegation he had not filed an income tax return for the 2003 tax year. This is the allegation the trial court found the State had proven in the revocation hearing.

Gilliam also asserts the trial court “arbitrarily and without notice” used the violation of community correction rules to “impose an additional executed sentence.” (Br. of Appellant at 9.) The sentencing court, however, had informed Gilliam his “failure to successfully complete the executed portion of the sentence [*i.e.*, four years in community corrections] will be deemed a violation of the terms of the suspension of the remaining four years.” (Appellee’s App. at 112.) The sentencing court reiterated this point, saying: “So *if you*, somewhere along the way, whether—*whatever component you’re in in Community Corrections*, at the time *fail to comply* with the Court’s orders, *you’re going to do eight years in prison, sir. That’s all there is to it.*” (*Id.* at 112-13) (emphases supplied). The trial court specifically referred the parties to the sentencing transcript when it imposed a portion<sup>5</sup> of Gilliam’s suspended sentence. Gilliam had notice his suspended sentence was conditioned on his successful completion of the community corrections portion of his sentence.

Gilliam was not denied due process when the trial court revoked his placement with community corrections and imposed a portion of his conditionally suspended sentence. Accordingly, we affirm.

Affirmed.

MATHIAS, J., and NAJAM, J., concur.

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<sup>5</sup> The sentencing court suspended four years of Gilliam’s sentence. The trial court ordered two years of the suspended sentence be executed and imposed two years of probation.